IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 94 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHAHBUDDIN HABIBBHAI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 94 of 1995

MR NS SHETH for Petitioner No. 1

MS NV JOSHI, APP for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 26/03/2003

ORAL JUDGEMENT

This is a revision application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 (for short, "the Code") for setting aside the

judgment and order of the learned Additional Sessions Judge, City Sessions Court, at Ahmedabad dated 24/01/95 in Cr.M.A. No. 97 of 1995 under which the learned Judge allowed the said application and cancelled the bail, granted to the petitioner by the learned Metropolitan Magistrate on 09/06/94, directing the release of the petitioner on bail on furnishing bail bond and PR in a sum of Rs.3000/- in Inquiry Criminal Case NO. 7 of 1994.

2. The aforesaid case was filed against the present petitioner for an offence punishable under Section 409 of IPC. The learned Magistrate had granted bail as aforesaid to the petitioner. It appears that under Section 437 of the said Code, the High Court or the Court of Sessions, only can enlarge an accused person on bail, but such person cannot be so released by a Magistrate, if it appears that the said person is guilty for an offence punishable with death or imprisonment for life. It is clear that the offence punishable under Section 409 of IPC is punishable with imprisonment for life and therefore, technically speaking, the learned Magistrate had no jurisdiction to enlarge the petitioner on bail. The learned Additional Sessions Judge was right in coming to a finding that the order of the learned Magistrate was illegal and therefore, it was required to be set aside. At the same time, it is also required to be considered that the offence was registered in 1994. The bail was granted to the petitioner by the learned Magistrate on 12/01/94. That, it was cancelled by the learned Additional Sessions Judge on 24/01/95. It appears from the record that when the present revision application was filed, this Court had passed an order on 22/03/95, granting interim relief in terms of Para 6(B) of the present petition. It means, that the order of the learned Additional Sessions Judge has been stayed by this Court, in 1995.

3. Looking to the facts and circumstances of the case, I am of the view that when a long passage of time has already gone and when the petitioner has been on bail for more than eight years, then in that event, it would not be proper to now require the petitioner to go to jail again.

4. For the foregoing reasons, this revision application is allowed. The order passed by the learned Additional Sessions Judge cancelling the bail of the petitioner is set aside. Rule is made absolute.

(D. P. Buch, J.)

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